

EXHIBIT 1

INTRODUCTION

Respondent Curtis Cannon (“Respondent”) has been the Community Development Director for the City of Oxnard since 2000. As a designated employee, Respondent is required to file an annual Statement of Economic Interests (“SEI”) disclosing all income received as required by the Political Reform Act (the “Act”).¹ In this matter, Respondent received gifts exceeding the reporting threshold of \$50 in 2007 through 2010, and failed to report these gifts on his annual SEIs for those years.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

- COUNT 1: In 2007, Respondent Curtis Cannon, as the Community Development Director for the City of Oxnard, failed to report gifts received from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on his 2007 annual Statement of Economic Interests, in violation of Sections 87300 and 87302 of the Government Code.
- COUNT 2: In 2008, Respondent Curtis Cannon, as the Community Development Director for the City of Oxnard, failed to report gifts received from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on his 2008 annual Statement of Economic Interests, in violation of Sections 87300 and 87302 of the Government Code.
- COUNT 3: In 2009, Respondent Curtis Cannon, as the Community Development Director for the City of Oxnard, failed to report gifts received from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on his 2009 annual Statement of Economic Interests, in violation of Sections 87300 and 87302 of the Government Code.
- COUNT 4: In 2010, Respondent Curtis Cannon, as the Community Development Director for the City of Oxnard, failed to report gifts received from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on his 2010 annual Statement of Economic Interests, in violation of Sections 87300 and 87302 of the Government Code.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

SUMMARY OF THE LAW

Duty to File Annual Statement of Economic Interests

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, that may be materially affected by their official actions, be disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, Section 87300 requires every agency to adopt and promulgate a Conflict of Interest Code. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter. (Section 87300.)

Disclosure Provisions

Section 82019, subdivision (a), defines “designated employee” to include any member of any agency whose position is “designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.” Each Conflict of Interest Code shall require that each designated employee file annual statements, disclosing reportable investments, business positions, interests in real property and sources of income. (Section 87302.) “Income” is defined, in part, as a payment received, including but not limited to any salary, wage, or gift, including any gift of food or beverage. (Section 82030, subd. (a).)

Section 87300 requires that every agency adopt and promulgate a Conflict of Interest Code and that Code shall have the force of law. In addition, any violation of that Code by a designated employee shall be a violation of the Act. Section 87302, subdivision (b), provides that an agency’s Conflict of Interest Code must require each designated employee of the agency to file annual statements of economic interests at a time specified in the agency’s conflict of interest code, disclosing investments, income, business positions, and interests in real property, held or received at anytime during the previous calendar year and that the information required to be disclosed describing these interests is the same as that required by Sections 87206 and 87207. An agency’s Conflict of Interest Code may incorporate Regulation 18730, which contains a model conflict of interest code, by reference.

The City of Oxnard’s Conflict of Interest Code (“Oxnard Code”) incorporates the Regulation 18730 model code by reference and lists the position of “Community Development Director” as a designated employee who makes or participates in making governmental decisions which may foreseeably have a material effect on their financial interests. The Oxnard Code lists the Community Development Director as a designated employee in Disclosure Category 1. The Oxnard Code states that Disclosure Category 1 requires that the designated employee complete all schedules of his annual SEI to disclose²:

² This disclosure excludes income from pensions for disability or retirement paid by a governmental entity.

“1. All financial interests, sources of income, investments and business positions and business entities located within or subject to the jurisdiction of the City [of Oxnard].

2. Business entities doing business, planning to do business, or having done business during the prior two years within the City [of Oxnard].

3. Any other financial interest, investment, interest in real property, source of income, or business position if the business entity in which the investment or business position is held, the interest in real property, financial interest or source of income may foreseeably be affected materially by any decision made or participated in by the designated person by reason of the City [of Oxnard] position held.”

Disclosure of Gifts

Section 89503, subdivision (c), of the Act states that “No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty (\$250) if the member or employee would be required to report the receipt of income or gifts from that source on his or his statement of economic interests.” The \$250 gift limit amount is adjusted biennially to reflect changes in the Consumer Price Index pursuant to Section 89503, subdivision (f). For 2007 and 2008, the applicable gift limit from a single source was \$390. For 2009 and 2010, the applicable gift limit from a single source was \$420.

Section 82028, subdivision (a), provides that a “gift” means any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. Regulation 18941³ states that “...a gift is ‘received’ or ‘accepted’ when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift.” Regulation 18944 states that a gift confers a personal benefit on the official when the official⁴ enjoys a direct benefit from the gift, the official uses the gift, or the official exercises discretion and control over who will use the gift or how to dispose of the gift. In addition, Regulation 18945, subdivision (a), states that a person is the source of a gift if the person either gives the gift directly to the official or the “person makes a payment to a third party and in fact directs and controls the use of the payment to make a gift to one or more clearly identified officials.” Regulation 18945, subdivision (b), states that official may presume that the person delivering or offering the gift is the source of the gift. Regulation 18946 states that the value of the gift is the fair market value as of the date of receipt or promise of the gift.

SUMMARY OF THE FACTS

This matter arose from a referral from the Ventura County District Attorney’s office. Respondent Cannon was the Community Development Director for the City of Oxnard at all times relevant to this matter. Under the Act and the Oxnard Code, designated employees are required to file annual SEIs disclosing all sources of income, including gifts received of \$50 or

³ All regulations in this Probable Cause Report are referenced as they were in effect in the relevant year (2007 – 2010) for that Count.

⁴ Section 82048 defines “public official” to include “every member, officer, employee or consultant of a state or local government agency.”

more from a single source. (Section 87302, subd. (a).) The City of Oxnard further defines this by requiring reporting of all sources of income located within or subject to the jurisdiction of the City of Oxnard and, in addition, all sources of income that may foreseeably be affected materially by any decision made or participated in by the designated person by reason of the City of Oxnard position held even if not located within or subject to the jurisdiction of the City of Oxnard. Respondent Cannon failed to disclose J.F. Shea Co., & Affiliated Companies (“Shea LLC”), a developer who does business in the City of Oxnard, on his annual SEIs for the years 2007 through 2010 after receiving meals and golf from Shea LLC exceeding the \$50 reporting threshold.

COUNT 1
Failure to Disclose Gifts on a Statement of Economic Interests

Respondent Cannon was the Community Development Director for the City of Oxnard at all times relevant to this matter, attaining his current position with the City in 2000. As a designated employee, Respondent was required to file an annual Statement of Economic Interests disclosing all income received. Respondent filed his 2007 SEI with the Oxnard City Clerk on March 27, 2008 and disclosed “No reportable interests on any schedule.” The chart below identifies the gifts received by Respondent in 2007:

Date	Gift	Donor	Value
05/20/07	Dinner	Shea LLC	\$87.15
05/21/07	Golf	Shea LLC	\$225.00
08/30/07	Dinner	Shea LLC	\$72.25
TOTAL:			\$384.40

By failing to report \$384.40 in gifts received from Shea LLC in 2007 on his 2007 annual SEI, Respondent violated Sections 87300 and 87302 of the Government Code.

COUNT 2
Failure to disclose gifts on a Statement of Economic Interests

Respondent Cannon was the Community Development Director for the City of Oxnard at all times relevant to this matter, attaining his current position with the City in 2000. As a designated employee, Respondent was required to file an annual Statement of Economic Interests disclosing all income received. Respondent filed his 2008 SEI with the Oxnard City Clerk on January 27, 2009 and disclosed “No reportable interests on any schedule.” The chart below identifies the gifts received by Respondent in 2008:

Date	Gift	Donor	Value
02/15/08	Lunch	Shea LLC	\$12.69
05/18/08	Dinner	Shea LLC	\$239.36
05/20/08	Golf	Shea LLC	\$100.00
			TOTAL: \$352.05

By failing to report \$352.05 in gifts received from Shea LLC in 2008 on his 2008 annual SEI, Respondent violated Sections 87300 and 87302 of the Government Code.

COUNT 3

Failure to disclose gifts on a Statement of Economic Interests

Respondent Cannon was the Community Development Director for the City of Oxnard at all times relevant to this matter, attaining his current position with the City in 2000. As a designated employee, Respondent was required to file an annual Statement of Economic Interests disclosing all income received. Respondent filed his 2009 SEI with the Oxnard City Clerk on March 11, 2010 and disclosed “No reportable interests on any schedule.” The chart below identifies the gifts received by Respondent in 2009:

Date	Gift	Donor	Value
05/17/09	Dinner	Shea LLC	\$204.57
05/19/09	Golf	Shea LLC	\$109.00
			TOTAL: \$313.57

By failing to report \$313.57 in gifts received from Shea LLC in 2009 on his 2009 annual SEI, Respondent violated Sections 87300 and 87302 of the Government Code.

COUNT 4

Failure to disclose gifts on a Statement of Economic Interests

Respondent Cannon was the Community Development Director for the City of Oxnard at all times relevant to this matter, attaining his current position with the City in 2000. As a designated employee, Respondent was required to file an annual Statement of Economic Interests disclosing all income received. Respondent filed his 2010 SEI with the Oxnard City Clerk on March 29, 2011 and disclosed two gifts: one from Oxnard Village Investments, LLC for golf and one from Plaza Development Partners, LLC for a meal. Respondent did not include the gift from Shea LLC, as listed on the chart below:

Date	Gift	Donor	Value
05/23/10	Golf	Shea LLC	\$139.00
TOTAL: \$139.00			

By failing to report the \$139.00 gift received from Shea LLC in 2010 on his 2010 annual SEI, Respondent violated Sections 87300 and 87302 of the Government Code.

CONCLUSION

This matter consists of four counts, which carries a maximum possible administrative penalty of Twenty Thousand Dollars (\$20,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Penalties for SEI non-disclosure violations range widely depending on the circumstances of each case. Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

Regarding the failure to disclose gifts received over the \$50 reporting threshold on SEIs, the typical penalty amounts have varied depending on the circumstances of the case. Recent prior penalties concerning SEI disclosure violations include:

- *In re Michael Rubio*, FPPC No. 07/293 (Approved January 28, 2011). Michael Rubio, as a member of the Kern County Board of Supervisors, failed to disclose his wife's income on his 2006 SEI. No evidence was found to show that his wife's income was intentionally omitted from his SEI. Further, he stated that he was married shortly before taking office and was unaware of the requirement to disclose his wife's income. However, this source of income was the source of a conflict of interest when he voted to approve a contract for his wife's employer. The approved stipulated settlement was \$1,000 for the violation of failing to disclose income on an SEI and \$2,500 for the violation of the conflict of interests provisions of the Act.

- *In re Gregory Fox*, FPPC No. 10/798 (Approved November 10, 2011). The Commission also approved a \$1,000 per violation regarding the non-disclosure of real property interests. In that case, Respondent Fox failed to disclose his interest in two undeveloped properties but insisted that he had received advice that led him to believe that the two parcels could be treated as part of his personal residence property and therefore not disclosed.

In this matter, Respondent Cannon did not disclose gifts received from a developer who regularly does business within his jurisdiction. Respondent states that he was not aware that the developer paid for the dinners and events that he attended, and for that reason, he did not disclose the gifts. Respondent has no prior history of violating the Act. Respondent amended his SEIs when contacted by the Enforcement Division. Based on the above prior cases and the information provided in this case, imposition of a \$1,000 penalty for each count is recommended.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Four Thousand Dollars (\$4,000) is recommended.

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Attorneys for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of)	FPPC No. 12/034
)	
)	STIPULATION, DECISION and
CURTIS CANNON,)	ORDER
)	
Respondent.)	
)	

Complainant the Enforcement Division of the Fair Political Practices Commission, and Respondent Curtis Cannon agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the right to personally appear at any administrative hearing held in this matter, to be represented by an attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed. It is further
3 stipulated and agreed that Respondent Curtis Cannon violated the Political Reform Act by failing to
4 report gifts received in the amount of fifty dollars or more on his annual Statement of Economic
5 Interests, in violation of Sections 87300 and 87302 of the Government Code (4 counts). All counts are
6 described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth
7 herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
10 of Four Thousand Dollars (\$4,000). A cashier's check from Respondent in said amount, made payable
11 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
12 administrative penalty, to be held by the State of California until the Commission issues its decision and
13 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
14 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
15 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with
16 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the
17 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
18 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
19 disqualified because of prior consideration of this Stipulation.

20
21 Dated: _____

Gary Winuk, Enforcement Chief,
on behalf of the
Fair Political Practices Commission

22
23
24
25 Dated: _____

Curtis Cannon,
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Curtis Cannon,” FPPC No. 12/034,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

9 Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Edmund Sotelo (“Respondent”) has been the City Manager for the City of Oxnard since 1998. As a designated employee, Respondent is required to file an annual Statement of Economic Interests (“SEI”) disclosing all income received as required by the Political Reform Act (the “Act”).¹ In this matter, Respondent received gifts exceeding the reporting threshold of \$50 in 2007, 2008, and 2009, and failed to report these gifts on his annual SEIs for those years. In addition, Respondent received gifts exceeding the applicable gift limit from one source in 2007, and two sources in 2008, then impermissibly made, participated in the making, or influenced governmental decisions concerning the donor which had a reasonably foreseeable material financial effect on the source of the gift.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

- COUNT 1: During 2007, Respondent Edmund Sotelo, a designated employee of the City of Oxnard, failed to report gifts from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on his 2007 annual Statement of Economic Interests, in violation of Sections 87300 and 87302 of the Government Code.
- COUNT 2: During 2008, Respondent Edmund Sotelo, a designated employee of the City of Oxnard, failed to report gifts from J.F. Shea Co., & Affiliated Companies, E.J. De La Rosa & Co., Inc. and Ojai Valley Inn, in the amount of fifty dollars or more on his 2008 annual Statement of Economic Interests, in violation of Sections 87300 and 87302 of the Government Code.
- COUNT 3: During 2009, Respondent Edmund Sotelo, a designated employee of the City of Oxnard, failed to report gifts from J.F. Shea Co., & Affiliated Companies and E.J. De La Rosa & Co., Inc., in the amount of fifty dollars or more on his 2009 annual Statement of Economic Interests, in violation of Sections 87300 and 87302 of the Government Code.
- COUNT 4: During 2007, Respondent Edmund Sotelo, a designated employee of the City of Oxnard, accepted approximately \$716.36 in gifts, which exceeded the \$390 gift limit, from the J.F. Shea Co., & Affiliated Companies, in violation of Section 89503, subdivision (c) of the Government Code.
- COUNT 5: During 2008, Respondent Edmund Sotelo, a designated employee of the City of Oxnard, accepted approximately \$468.45 in gifts, which exceeded the \$390 gift

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

limit, from the J.F. Shea Co., & Affiliated Companies, in violation of Section 89503, subdivision (c) of the Government Code.

COUNT 6: During 2008, Respondent Edmund Sotelo, a designated employee of the City of Oxnard, accepted approximately \$805.92 in gifts, which exceeded the \$390 gift limit, from the E.J. De La Rosa & Co., Inc., in violation of Section 89503, subdivision (c) of the Government Code.

COUNT 7: On or about December 23, 2008, Respondent Edmund Sotelo, a designated employee of the City of Oxnard, made, participated in the making, or influenced a governmental decision by approving a Revised Development Schedule regarding the RiverPark Project, an affiliated entity of J.F. Shea Co., & Affiliated Companies, who was the source of a gift that exceeded the annual gift limit applicable to Respondent, in which he knew or should have known was in violation of Government Code Section 87100.

SUMMARY OF THE LAW

Duty to File Annual Statement of Economic Interests

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, that may be materially affected by their official actions, be disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, Section 87300 requires every agency to adopt and promulgate a Conflict of Interest Code. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter. (Section 87300.)

Disclosure Provisions

Section 82019, subdivision (a), defines “designated employee” to include any member of any agency whose position is “designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.” Each Conflict of Interest Code shall require that each designated employee file annual statements, disclosing reportable investments, business positions, interests in real property and sources of income. (Section 87302.) “Income” is defined, in part, as a payment received, including but not limited to any salary, wage, or gift, including any gift of food or beverage. (Section 82030, subd. (a).)

Section 87300 requires that every agency adopt and promulgate a Conflict of Interest Code and that Code shall have the force of law. In addition, any violation of that Code by a designated employee shall be a violation of the Act. Section 87302, subdivision (b), provides that an agency’s Conflict of Interest Code must require each designated employee of the agency to file annual statements of economic interests at a time specified in the agency’s conflict of interest code, disclosing investments, income, business positions, and interests in real property,

held or received at anytime during the previous calendar year and that the information required to be disclosed describing these interests is the same as that required by Sections 87206 and 87207. An agency's Conflict of Interest Code may incorporate Regulation 18730, which contains a model conflict of interest code, by reference.

The City of Oxnard's Conflict of Interest Code ("Oxnard Code") incorporates the Regulation 18730 model code by reference and lists the position of "City Manager" as a designated employee who makes or participates in making governmental decisions which may foreseeably have a material effect on their financial interests. The Oxnard Code lists the City Manager as a designated employee in Disclosure Category 1. The Oxnard Code states that Disclosure Category 1 requires that the designated employee complete all schedules of his annual SEI to disclose²:

"1. All financial interests, sources of income, investments and business positions and business entities located within or subject to the jurisdiction of the City [of Oxnard].

2. Business entities doing business, planning to do business, or having done business during the prior two years within the City [of Oxnard].

3. Any other financial interest, investment, interest in real property, source of income, or business position if the business entity in which the investment or business position is held, the interest in real property, financial interest or source of income may foreseeably be affected materially by any decision made or participated in by the designated person by reason of the City [of Oxnard] position held."

Disclosure of Gifts

Section 89503, subdivision (c), of the Act states that "No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty (\$250) if the member or employee would be required to report the receipt of income or gifts from that source on his or his statement of economic interests." The \$250 gift limit amount is adjusted biennially to reflect changes in the Consumer Price Index pursuant to Section 89503, subdivision (f). For 2007 and 2008, the applicable gift limit from a single source was \$390. For 2009 and 2010, the applicable gift limit from a single source was \$420.

Section 82028, subdivision (a), provides that a "gift" means any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. Regulation 18941³ states that "...a gift is 'received' or 'accepted' when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift." Regulation 18944 states that a gift confers a personal benefit on the official when the official⁴ enjoys a direct benefit from the gift, the official uses the gift, or

² This disclosure excludes income from pensions for disability or retirement paid by a governmental entity.

³ All regulations in this Exhibit are referenced as they were in effect in the relevant year (2007 – 2010) for that Count.

⁴ Section 82048 defines "public official" to include "every member, officer, employee or consultant of a state or local government agency."

the official exercises discretion and control over who will use the gift or how to dispose of the gift. In addition, Regulation 18945, subdivision (a), states that a person is the source of a gift if the person either gives the gift directly to the official or the “person makes a payment to a third party and in fact directs and controls the use of the payment to make a gift to one or more clearly identified officials.” Regulation 18945, subdivision (b), states that official may presume that the person delivering or offering the gift is the source of the gift. Regulation 18946 states that the value of the gift is the fair market value as of the date of receipt or promise of the gift.

Conflicts of Interest

The primary purpose of the conflict of interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subd. (b).) In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use this official position to influence a governmental decision in which the official knows, or has reason to know, that he has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Section 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision.⁵

1. **Public Official:** The individual must be a public official. Section 82048 defines “public official” to include “every member, officer, employee or consultant” of a local government agency.

2. **Decisions:** The official must make, participate in making, or attempt to use his official position to influence a governmental decision. A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position: (1) Votes on a matter; (2) Appoints a person; (3) Obligates or commits his or her agency to any course of action; (4) Enters into any contractual agreement on behalf of his or her agency; or (5) Determines not to act, unless such determination is made because of his or her financial interest. (Reg. 18702.1, subd. (a).) A public official “participates in making a governmental decision” when, acting within the authority of his or her position, the official negotiates, without significant substantive review, regarding a governmental decision or advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review. (Reg. 18702.2.) A public official “attempts to use his or her official position to influence a governmental decision” of his her agency when the official acts or purports to act, on behalf of, or as the representative of his or her agency to any member, officer, employee, or consultant. (Reg. 18702.3.)

3. **Economic Interests:** The official must have an economic interest, as defined in Section 87103, that may be financially affected by the governmental decision. In 2007 and 2008, a public official had a financial interest in any donor of a gift or gifts aggregating \$390 or more in

⁵ The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Sections 87103, subd. (e), and 89503, subd. (c); Reg.18940.2.) In 2009, a public official had a financial interest in any donor of a gift or gifts aggregating \$420 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Sections 87103, subd. (e), and 89503, subd. (c); Reg.18940.2.)

4. **Direct of Indirect Financial Effect on Economic Interests:** It must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Reg. 18704.) A source of a gift is directly involved in a decision if he or she is the “subject of the proceeding.” (Reg. 18704.1.)

5. **Material Financial Effect on Economic Interests:** It must be determined if the governmental decision has a material financial effect on the economic interest. In the case of an economic interest that is the directly involved donor of a gift, the financial effect is presumed to be material. (Reg. 18705.4, subd. (a).)

6. **Foreseeability:** At the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect. A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Reg. 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.)

SUMMARY OF THE FACTS

This matter arose from a referral from the Ventura County District Attorney’s office. Respondent Sotelo was the City Manager for the City of Oxnard at all times relevant to this matter, attaining his current position with the City in 1998. Respondent Sotelo failed to disclose J.F. Shea Co., & Affiliated Companies (“Shea LLC”), a developer who does business in the City of Oxnard, on his annual SEIs for the years 2007 – 2009 after receiving meals, drinks and golf from Shea LLC exceeding the \$50 reporting threshold and, in 2007 and 2008, exceeding the \$390 gift limit threshold. Respondent also failed to disclose E.J. De La Rosa & Co., Inc. (“De La Rosa”), a municipal bond underwriter who does business with the City of Oxnard, on his annual SEIs for 2008 and 2009, after receiving meals and tickets to a Broadway show for Respondent and his wife from De La Rosa exceeding the \$50 reporting threshold and, in 2008, exceeding the \$390 gift limit threshold. In 2008, Respondent also failed to disclose a gift of golf received from a luxury resort outside his jurisdiction. In addition, Respondent Sotelo approved a Revised Development Schedule in 2008 and 2009 regarding a Shea LLC development project after receiving gifts exceeding the \$390 threshold Shea LLC.

COUNT 1

Failure to disclose gifts on a Statement of Economic Interests

Respondent Sotelo was the City Manager for the City of Oxnard at all times relevant to this matter. As a designated employee, Respondent was required to file an annual SEI disclosing all income received. Respondent filed his 2007 SEI with the Oxnard City Clerk on March 19, 2008 and disclosed “No reportable interests on any schedule.” The chart below identifies the gifts received by Respondent Sotelo in 2007:

Date	Gift	Donor	Value
05/20/07	Drinks	Shea LLC	\$16.10
05/20/07	Dinner	Shea LLC	\$201.72
05/21/07	Golf	Shea LLC	\$225.00
06/13/07	Dinner	Shea LLC	\$103.15
08/30/07	Dinner	Shea LLC	\$170.39
TOTAL (Shea LLC):			\$716.36

By failing to report \$716.36 in gifts received from Shea LLC in 2007 on his 2007 annual SEI, Respondent violated Sections 87300 and 87302 of the Government Code.

COUNT 2

Failure to disclose gifts on a Statement of Economic Interests

Respondent Sotelo was the City Manager for the City of Oxnard at all times relevant to this matter. As a designated employee, Respondent was required to file an annual SEI disclosing all income received. Respondent filed his 2008 SEI with the Oxnard City Clerk on March 4, 2009 and disclosed “No reportable interests on any schedule.”⁶ The chart below identifies the gifts received by Respondent Sotelo in 2008:

Date	Gift	Donor	Value
02/15/08	Lunch	Shea LLC	\$12.69
03/27/08	Golf	Ojai Valley Inn	\$170.00
03/27/08	Meal	De La Rosa	\$29.71
05/18/08	Dinner	Shea LLC	\$239.36
06/30/08	Dinner	De La Rosa	\$127.79
12/03/08	Dinner (Respondent & Spouse)	De La Rosa	\$181.56
12/04/08	Dinner (Respondent & Spouse)	De La Rosa	\$261.94
12/04/08	Broadway Show (Respondent & Spouse)	De La Rosa	\$176.50
12/04/08	Brownies	De La Rosa	\$28.42
12/05/08	Dinner (Respondent & Spouse)	Shea LLC	\$216.40
TOTAL (Ojai Valley Inn):			\$170.00
TOTAL (De La Rosa):			\$805.92
TOTAL (Shea LLC):			\$468.45

⁶ In addition, Respondent filed a second 2008 SEI on March 13, 2009, for his position on the Oxnard Performing Arts Center Corporation and also disclosed no reportable interests.

By failing to report \$468.45 in gifts received from Shea LLC, \$170.00 in gifts received from Ojai Valley Inn, and \$805.92 in gifts from De La Rosa in 2008 on his 2008 annual SEI, Respondent violated Sections 87300 and 87302 of the Government Code.

COUNT 3

Failure to disclose gifts on a Statement of Economic Interests

Respondent Sotelo was the City Manager for the City of Oxnard at all times relevant to this matter. As a designated employee, Respondent was required to file an annual Statement of Economic Interests disclosing all income received. Respondent filed his 2009 SEI with the Oxnard City Clerk on February 28, 2010 and disclosed “No reportable interests on any schedule.” The chart below identifies the gifts received by Respondent Sotelo in 2009:

Date	Gift	Donor	Value
05/17/09	Dinner	Shea LLC	\$204.57
05/19/09	Golf	Shea LLC	\$109.00
12/10/09	Brownies	De La Rosa	\$33.25
12/13/09	Dinner	De La Rosa	\$101.52
12/14/09	Lunch	De La Rosa	\$54.72
TOTAL (De La Rosa):			\$189.49
TOTAL (Shea LLC):			\$313.57

By failing to report \$313.57 in gifts received from Shea LLC and \$189.49 in gifts from De La Rosa in 2009 on his 2009 annual SEI, Respondent violated Sections 87300 and 87302 of the Government Code.

COUNT 4

Acceptance of Gifts in Excess of the Annual Gift Limit

Respondent Sotelo was the City Manager for the City of Oxnard at all times relevant to this matter. As a designated employee, Respondent was prohibited from accepting gifts from a single source in excess of the \$390 annual gift limit for 2007. As shown in the chart from Count 1 (page 6), Respondent received gifts totaling approximately \$716.36 in 2007 from Shea LLC, \$326.36 over the annual gift limit.

By accepting gifts over the annual gift limit in 2007, Respondent violated Section 89503, subdivision (c), of the Government Code.

COUNT 5

Acceptance of Gifts in Excess of the Annual Gift Limit

Respondent Sotelo was the City Manager for the City of Oxnard at all times relevant to this matter. As a designated employee, Respondent was prohibited from accepting gifts from a single source in excess of the \$390 annual gift limit for 2008. As shown in the chart from Count

2 (page 6), Respondent received gifts totaling approximately \$468.45 in 2008 from Shea LLC, \$78.45 over the annual gift limit.

By accepting gifts over the annual gift limit in 2008, Respondent violated Section 89503, subdivision (c), of the Government Code.

COUNT 6

Acceptance of Gifts in Excess of the Annual Gift Limit

Respondent Sotelo was the City Manager for the City of Oxnard at all times relevant to this matter. As a designated employee, Respondent was prohibited from accepting gifts from a single source in excess of the \$390 annual gift limit for 2008. As shown in the chart from Count 2 (page 6), Respondent received gifts totaling approximately \$805.92 in 2008 from De La Rosa, \$415.92 over the annual gift limit.

By accepting gifts over the annual gift limit in 2008, Respondent violated Section 89503, subdivision (c), of the Government Code.

COUNT 7

Making, Participating and Influencing of a Governmental Decision Concerning the Donor of the Gifts Received in Excess of the Annual Gift Limit

Respondent Sotelo was the City Manager for the City of Oxnard at all times relevant to this matter. As stated above, on February 15, 2008, May 18, 2008, and December 5, 2008, Respondent Sotelo accepted gifts of meals from Shea LLC totaling \$468.45. The gift limit for 2008 was \$390, making the gifts from Shea LLC \$78.45 over the gift limit. Gifts aggregating \$390 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when a decision is made make the source of the gift or gifts an “economic interest” of the official’s. (Sections 87103, subd. (e), and 89503, subd. (c); Reg.18940.2.)

On December 23, 2008, and December 28, 2008, Respondent Sotelo approved a Revised Development Schedule (“RDS”) regarding a Shea LLC development project in two extension contracts.⁷ The development project, known as RiverPark, is wholly owned by J.F. Shea Co., & Affiliated Companies (a.k.a. Shea LLC) and its subsidiaries and affiliated entities.⁸ Respondent made, participated and influenced this governmental decision by, as the RDS states, using his reasonable discretion to determine if the developer’s diligence in development of the project, as well as other factors, warrants an extension of the deadlines for the commercial development to be completed. Under the RDS, he also must find that the extension will not negatively impact the interests of the City. He found that the developer had been diligent but that “factors outside of the Developer’s control have negatively impacted the rate of commercial development in the

⁷ Additionally, on July 7, 2009, Respondent Sotelo approved a third RDS regarding the Shea LLC development project known as RiverPark citing identical reasoning.

⁸ Examples of these would be: Riverpark Collection, LLC; Riverpark Landing, LLC; Riverpark Pointe, LLC; Riverpark A, LLC; Riverpark B, LLC; and Riverpark Hotel, LLC.

Project” and the extension request was warranted. This was signed by Respondent, as well as the representatives from Shea LLC and its affiliated entities.⁹

Shea LLC was directly involved in the decision since it was the “subject of the proceeding” involving its own development. The decision had a reasonably foreseeable material financial effect on Shea LLC, (in this case the effect is presumed to be material) and the deadline for commercial development as required by the City of Oxnard was extended so that the project was not terminated and the property did not revert back to the City.

By making, participating in making or influencing the decision regarding Shea LLC, Respondent violated Section 87100, of the Government Code.

CONCLUSION

This matter consists of seven counts, which carries a maximum possible administrative penalty of Thirty Five Thousand Dollars (\$35,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

SEI Non-Disclosure: Penalties for SEI non-disclosure violations range widely depending on the circumstances of each case. Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official’s economic interests and it has the potential to conceal conflicts of interest.

Regarding the failure to disclose gifts received over the \$50 reporting threshold on SEIs, the typical penalty amounts have varied depending on the circumstances of the case. Recent prior penalties concerning SEI disclosure violations include:

- *In re Michael Rubio*, FPPC No. 07/293 (Approved January 28, 2011). Michael Rubio, as a member of the Kern County Board of Supervisors, failed to disclose his wife’s income on his 2006 SEI. No evidence was found to show that his wife’s income was

⁹ The signatures for all of the affiliated entities were the same as the two signatories for Shea LLC, Stephen D. Stambaugh, Assistant Secretary and Colm Macken, Vice President.

intentionally omitted from his SEI. Further, he stated that he was married shortly before taking office and was unaware of the requirement to disclose his wife's income. However, this source of income was the source of a conflict of interest when he voted to approve a contract for his wife's employer. The approved stipulated settlement was \$1,000 for the violation of failing to disclose income on an SEI and \$2,500 for the violation of the conflict of interest provisions of the Act.

- *In re Gregory Fox*, FPPC No. 10/798 (Approved November 10, 2011). The Commission also approved a \$1,000 per violation regarding the non-disclosure of real property interests. In that case, Respondent Fox failed to disclose his interest in two undeveloped properties but insisted that he had received advice that led him to believe that the two parcels could be treated as part of his personal residence property and therefore not disclosed.

In this matter, Respondent Sotelo did not disclose gifts received from a developer and a bond underwriter who regularly do business within his jurisdiction and a gift of golf from a luxury resort outside the jurisdiction. Respondent has no prior history of violating the Act. Respondent amended his SEIs before being contacted by the Enforcement Division once he realized that he was required to disclose the gifts. Additionally, Respondent voluntarily reported additional gifts for which we did not have records. Based on the above prior cases and the information provided in this case, imposition of a \$1,000 penalty for each count is recommended.

Over-the-limits Gift: Penalties for gifts received over the applicable limits violations in the last couple of years range between \$1,500 for gifts of low amounts with little possibility of causing a conflict of interest to \$2,500 but depends on the circumstances of each case. Recent prior penalties concerning gifts received over the applicable limits violations include:

- *In re Louie Martinez*, FPPC No. 09/261 (Approved June 9, 2011). Louie Martinez, a senior project manager for the City of Irvine, received discounted landscaping service with a company who contracted with the City. The approved stipulated settlement was \$2,000 per count for the violations of receiving gifts over the limit and \$4,000 for the violation of the conflict of interest provisions of the Act when he approved an invoice for payment of approximately \$86,000 to the company that provided him the services.
- *In re Patrick Moloney*, FPPC No. 09/826 (Approved June 10, 2010). Patrick Moloney, Executive Director of the Pilot Commission for the Bays of San Francisco, San Pablo and Suisun, received gifts in the form of free monthly waterfront parking from an association representing the pilots the board regulates. The approved stipulated settlement was \$2,000 per count for the violations of receiving gifts over the limit, for a total penalty of \$4,000.

In this matter, Respondent Sotelo received gifts over the limits from a developer and a bond underwriter who have regular business with the City of Oxnard. Respondent has paid down the gifts received to the amount of the applicable gift limit. Based on the above prior cases

and the information provided in this case, imposition of a \$2,000 penalty for each count is recommended.

Conflict of Interest: Making a governmental decision in which an official has a financial interest may create the appearance that the governmental decision was a product of that conflict of interest. Penalties for conflict of interest violations in the last couple of years range between \$2,500 to \$4,500 but depending on the circumstances of each case. Recent prior penalties concerning conflict of interest violations include:

- *In the Matter of Theodore Park*, FPPC No. 11/058 (Approved July 12, 2012). Theodore Park was the Acting Deputy Director of the Real Estate Services Division of the California Department of General Services. His conflict of interest stemmed from his wife's income from a client of her business, which Mr. Park signed certifications to allow the contracts for that business to be executed. The approved stipulated settlement was \$3,500 for the violation of the conflict of interest rules.
- *In re Louie Martinez*, referred to above, \$4,000 was the fine for the violation of the conflict of interest provisions of the Act when he approved an invoice for payment of approximately \$86,000 to the company that provided him the services resulting from his gifts received over the limits.

In this case, although Respondent takes full responsibility for his actions, he asserts that since he was following the directives of the Oxnard City Council by recommending the contract extensions for Shea LLC's project, he did not realize that he could not participate in the process regarding Shea LLC's development project. Respondent believes that he was facilitating the informal direction of the council to recommend the schedules be extended and that the economic downturn caused the extensions to be necessary for the project to survive. Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$3,500 is justified. A higher penalty is not being sought because Respondent cooperated fully with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Additionally, there is no history of prior violations of the Act by Respondent.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Twelve Thousand Five Hundred Dollars (\$12,500) is recommended.

1 GARY S. WINUK
Chief of Enforcement
2 GALENA WEST
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of)	FPPC No. 12/029
)	
)	STIPULATION, DECISION and
14 EDMUND SOTELO,)	ORDER
)	
15 Respondent.)	
)	
16)	
17)	

18 Complainant the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Edmund Sotelo agree that this Stipulation will be submitted for consideration by the Fair
20 Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed. It is further
3 stipulated and agreed that Respondent Edmund Sotelo violated the Political Reform Act by failing to
4 report gifts received in the amount of fifty dollars or more on his annual Statement of Economic
5 Interests, in violation of Sections 87300 and 87302 of the Government Code (3 counts); accepting gifts,
6 which exceeded the gift limit, in violation of Section 89503, subdivision (c) of the Government Code (3
7 counts); and making, participating in the making, or influencing a governmental decision by approving a
8 Revised Development Schedule regarding the RiverPark Project, an affiliated entity of J.F. Shea Co., &
9 Affiliated Companies, who was the source of a gift that exceeded the annual gift limit applicable to
10 Respondent, in violation of Government Code Section 87100 (1 count). All counts are described in
11 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein.
12 Exhibit 1 is a true and accurate summary of the facts in this matter.

13 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
14 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
15 of Twelve Thousand Five Hundred Dollars (\$12,500). A cashier's check from Respondent in said
16 amount, made payable to the "General Fund of the State of California," is submitted with this
17 Stipulation as full payment of the administrative penalty, to be held by the State of California until the
18 Commission issues its decision and order regarding this matter. The parties agree that in the event the
19 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
20 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
21 by Respondent in connection with this Stipulation shall be reimbursed to Respondent. Respondent
22 further stipulates and agrees that in the event the Commission rejects the Stipulation, and a full
23 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,
24 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

25 //

26 //

1
2 Dated: _____

Gary Winuk, Enforcement Chief,
on behalf of the
Fair Political Practices Commission

3
4
5
6 Dated: _____

Edmund Sotelo,
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Edmund Sotelo,” FPPC No. 12/029,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

9 Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Dr. Thomas Holden (“Respondent”) is currently the Mayor of the City of Oxnard, and has been in office since December 7, 2004. As such, Respondent was required to file an annual Statement of Economic Interests (“SEI”) disclosing all income received as required by the Political Reform Act (the “Act”).¹ In this matter, Respondent received gifts exceeding the reporting threshold of \$50 in 2007, 2008, and 2009, and failed to report these gifts on his annual SEIs for those years. In addition, Respondent received gifts exceeding the applicable gift limit in 2007 and 2009, then impermissibly made, participated in the making, or influenced a governmental decision concerning one of the donors which had a reasonably foreseeable material financial effect on the source of the gift.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

- COUNT 1: During 2007, Respondent Dr. Thomas Holden, Mayor of the City of Oxnard, failed to report gifts from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on his 2007 annual Statement of Economic Interests, in violation of Section 87203 of the Government Code.
- COUNT 2: During 2008, Respondent Dr. Thomas Holden, Mayor of the City of Oxnard, failed to report gifts from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on his 2008 annual Statement of Economic Interests, in violation of Section 87203 of the Government Code.
- COUNT 3: During 2009, Respondent Dr. Thomas Holden, Mayor of the City of Oxnard, failed to report gifts from Bernard Huberman, in the amount of fifty dollars or more on his 2009 annual Statement of Economic Interests, in violation of Section 87203 of the Government Code.
- COUNT 4: During 2007, Respondent Dr. Thomas Holden, Mayor of the City of Oxnard, accepted approximately \$442.82 in gifts, which exceeded the \$390 gift limit, from the J.F. Shea Co., & Affiliated Companies, in violation of Section 89503, subdivision (a) of the Government Code.
- COUNT 5: During 2009, Respondent Dr. Thomas Holden, Mayor of the City of Oxnard, accepted approximately \$4,620.00 in gifts, which exceeded the \$420 gift limit, from the Bernard Huberman, in violation of Section 89503, subdivision (a) of the Government Code.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

COUNT 6: On or about August 7, 2007, Respondent Dr. Thomas Holden, Mayor of the City of Oxnard, made, participated in the making, or influenced a governmental decision when he voted to approve an ordinance to authorize the location of a theatre in a Specific Plan and voted to grant authority to the himself to approve a Memorandum of Understanding with J.F. Shea Co., & Affiliated Companies, who was the source of a gift that exceeded the annual gift limit applicable to Respondent, in which he knew or should have known was in violation of Government Code Section 87100.

SUMMARY OF THE LAW

Duty to File Annual Statement of Economic Interests

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, that may be materially affected by their official actions, be disclosed, so that conflicts of interests may be avoided.

Under the Act, every person who holds an office specified in Section 87200, which includes mayors and members of city councils, shall, each year at a time specified by Commission regulations, file an annual SEI disclosing his investments, his interests in real property and all sources of income, including gifts received of \$50 or more from a single source, who may foreseeably be affected materially by any decision made or participated in by the city councilmember by virtue of his position. (Section 87203.) Section 87200 includes chief administrative officers of counties, *mayors*, city managers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election. (Emphasis added.) Section 87204 requires that all filers specified in Section 87200, including members of a city council, must, within thirty days after leaving the office, file a statement disclosing his investments, his interests in real property, and his income during the period since the previous SEI was filed.

Disclosure Provisions

“Income” is defined, in part, as a payment received, including but not limited to any salary, wage, or gift, including any gift of food or beverage. (Section 82030, subd. (a).) When income is required to be reported, the SEI shall contain the name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source. (Section 87207.)

Prohibition Against Accepting Gifts in Excess of the Gift Limit

Section 89503, subdivision (a), of the Act states that “No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250).” The \$250 gift limit amount is adjusted biennially to reflect changes in the

Consumer Price Index pursuant to Section 89503, subdivision (f). For 2007 and 2008, the applicable gift limit from a single source was \$390. For 2009 and 2010, the applicable gift limit from a single source was \$420.

Section 82028, subdivision (a), provides that a “gift” means any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. Regulation 18941² states that “...a gift is ‘received’ or ‘accepted’ when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift.” In addition, Regulation 18945, subdivision (a), states that a person is the source of a gift if the person either gives the gift directly to the official³ or the “person makes a payment to a third party and in fact directs and controls the use of the payment to make a gift to one or more clearly identified officials.” Regulation 18945, subdivision (b), states that official may presume that the person delivering or offering the gift is the source of the gift.

Regulation 18944, subdivision (a), states that a gift given to both a public official and a member of his immediate family is a gift to the official for the full value of the gift. This is also true when the official exercises discretion and control over who will use the gift. (Reg. 18944, subd. (b)(3).) A gift confers a personal benefit on the official when the official enjoys a direct benefit from the gift, the official uses the gift, or the official exercises discretion and control over who will use the gift or how to dispose of the gift. (Reg. 18944.)

Regulation 18946 states that the value of the gift is the fair market value as of the date of receipt or promise of the gift. For tickets or passes, the value is the face value of the ticket as offered to the general public. (Reg. 18946.1.)

Conflicts of Interest

The primary purpose of the conflict of interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subd. (b).) In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use this official position to influence a governmental decision in which the official knows, or has reason to know, that he has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Section 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision.⁴

² All regulations in this Exhibit are referenced as they were in effect in the relevant year (2007 – 2010) for that Count.

³ Section 82048 defines “public official” to include “every member, officer, employee or consultant of a state or local government agency.”

⁴ The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

1. Public Official: The individual must be a public official. Section 82048 defines “public official” to include “every member, officer, employee or consultant” of a local government agency.

2. Decisions: The official must make, participate in making, or attempt to use his official position to influence a governmental decision. A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position: (1) Votes on a matter; (2) Appoints a person; (3) Obligates or commits his or her agency to any course of action; (4) Enters into any contractual agreement on behalf of his or her agency; or (5) Determines not to act, unless such determination is made because of his or her financial interest. (Reg. 18702.1, subd. (a).) A public official “participates in making a governmental decision” when, acting within the authority of his or her position, the official negotiates, without significant substantive review, regarding a governmental decision or advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review. (Reg. 18702.2.) A public official “attempts to use his or her official position to influence a governmental decision” of his her agency when the official acts or purports to act, on behalf of, or as the representative of his or her agency to any member, officer, employee, or consultant. (Reg. 18702.3.)

3. Economic Interests: The official must have an economic interest, as defined in Section 87103, that may be financially affected by the governmental decision. In 2007, a public official had a financial interest in any donor of a gift or gifts aggregating \$390 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Sections 87103, subd. (e), and 89503, subd. (c); Reg. 18940.2.) In 2009, a public official had a financial interest in any donor of a gift or gifts aggregating \$420 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Sections 87103, subd. (e), and 89503, subd. (c); Reg. 18940.2.)

4. Direct or Indirect Financial Effect on Economic Interests: It must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Reg. 18704.) A source of a gift is directly involved in a decision if he or she is the “subject of the proceeding.” (Reg. 18704.1.)

5. Material Financial Effect on Economic Interests: It must be determined if the governmental decision has a material financial effect on the economic interest. In the case of an economic interest that is the directly involved donor of a gift, the financial effect is presumed to be material. (Reg. 18705.4, subd. (a).)

6. Foreseeability: At the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect. A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Reg. 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.)

SUMMARY OF THE FACTS

This matter arose from a referral from the Ventura County District Attorney's office. Respondent Holden is currently the Mayor of the City of Oxnard, and has been in office since December 7, 2004. Respondent Holden failed to disclose J.F. Shea Co., & Affiliated Companies ("Shea LLC"), a developer who does business in the City of Oxnard, on his annual SEIs for the years 2007 and 2008 after receiving meals, drinks and golf from Shea LLC exceeding the \$50 reporting threshold and, in 2007, exceeding the \$390 gift limit threshold. Respondent also failed to disclose Bernard Huberman ("Huberman"), a local developer who owns or co-owns multiple businesses doing business with the City of Oxnard, on his annual SEI for 2009, after receiving a trip to Napa from Huberman aboard Huberman's private airplane for Respondent and his wife exceeding the \$50 reporting threshold, exceeding the gift limit threshold. In addition, Respondent Holden, while on the Oxnard City Council, voted to approve an ordinance to amend a development agreement as well as granting authority to the Mayor to enter into a Memorandum of Understanding between the City of Oxnard and Shea LLC development after receiving gifts exceeding the \$390 limit in 2007 from Shea LLC.

COUNT 1

Failure to Disclose Gifts on a Statement of Economic Interests

Respondent Holden is currently the Mayor of the City of Oxnard, and has been in office since December 7, 2004. As such, Respondent was required to file an annual SEI disclosing all income received, including gifts. Respondent filed his 2007 SEI with the Oxnard City Clerk on March 20, 2008 and disclosed an investment interest in Family Optometric Group and its office building, but did not report the receipt of any gifts. The chart below identifies the gifts received by Respondent Holden in 2007:

Date	Gift	Donor	Value
05/20/07	Drinks	Shea LLC	\$16.10
05/20/07	Dinner	Shea LLC	\$201.72
05/21/07	Golf	Shea LLC	\$225.00
TOTAL (Shea LLC):			\$442.82

By failing to report \$442.82 in gifts received from Shea LLC 2007 on his 2007 annual SEI, Respondent violated Section 87203 of the Government Code.

COUNT 2

Failure to Disclose Gifts on a Statement of Economic Interests

Respondent Holden is currently the Mayor of the City of Oxnard, and has been in office since December 7, 2004. As such, Respondent was required to file an annual SEI disclosing all income received, including gifts. Respondent filed his 2008 SEI with the Oxnard City Clerk on March 13, 2009, and disclosed an investment interest in Family Optometric Group and its office building, but did not report the receipt of any gifts. The chart below identifies the gifts received by Respondent Holden in 2008:

Date	Gift	Donor	Value
02/15/08	Lunch	Shea LLC	\$12.69
05/18/08	Dinner (Respondent & Wife)	Shea LLC	\$239.36
TOTAL (Shea LLC): \$252.05			

By failing to report \$252.05 in gifts received from Shea LLC in 2008 on his 2008 annual SEI, Respondent violated Section 87203 of the Government Code.

COUNT 3

Failure to Disclose Gifts on a Statement of Economic Interests

Respondent Holden is currently the Mayor of the City of Oxnard, and has been in office since December 7, 2004. As such, Respondent was required to file an annual SEI disclosing all income received, including gifts. Respondent filed his 2009 SEI with the Oxnard City Clerk on March 30, 2010 and disclosed various investment interests, but did not report the receipt of any gifts. The chart below identifies the gifts received by Respondent Holden in 2009:

Date	Gift	Donor	Value
01/30/09	Napa Trip (Respondent & Wife)	Huberman	\$4,620.00
TOTAL (Huberman): \$4,620.00			

By failing to report \$4,620.00 in gifts received from Huberman in 2009 on his 2009 annual SEI, Respondent violated Section 87203 of the Government Code.

COUNT 4

Acceptance of Gifts in Excess of the Annual Gift Limit

Respondent Holden is currently the Mayor of the City of Oxnard, and has been in office since December 7, 2004. As such, Respondent was prohibited from accepting gifts from a single source in excess of the \$390 annual gift limit for 2007. As shown in the chart from Count 1 (page 5), Respondent accepted gifts totaling approximately \$442.82 in 2007 from Shea LLC, \$52.82 over the annual gift limit.

By accepting gifts over the annual gift limit in 2007, Respondent violated Section 89503, subdivision (a), of the Government Code.

COUNT 5

Acceptance of Gifts in Excess of the Annual Gift Limit

Respondent Holden is currently the Mayor of the City of Oxnard, and has been in office since December 7, 2004. As such, Respondent was prohibited from accepting gifts from a single source in excess of the \$420 annual gift limit for 2009. As shown in the chart from Count 3

(page 6), Respondent accepted gifts totaling approximately \$4,620.00 in 2009 from Huberman, \$4,200.0 over the annual gift limit.

By accepting gifts over the annual gift limit in 2009, Respondent violated Section 89503, subdivision (a), of the Government Code.

COUNT 6

Making, Participating and Influencing of a Governmental Decision Concerning the Donor of the Gifts Accepted in Excess of the Annual Gift Limit

Respondent Holden is currently the Mayor of the City of Oxnard, and has been in office since December 7, 2004. As stated above, on May 20, 2007, May 21, 2007, and June 13, 2007, Respondent Holden accepted gifts of drinks, dinner and golf from Shea LLC totaling \$442.82. The gift limit for 2007 was \$390, making the gifts from Shea LLC \$52.82 over the gift limit. At the August 7, 2007, Oxnard City Council meeting, Respondent Holden voted to approve two items regarding RiverPark A, LLC. RiverPark A, LLC is a wholly owned subsidiary and affiliated entity of J.F. Shea Co., & Affiliated Companies (a.k.a. Shea LLC). The first item was the adoption of Ordinance #2744 to authorize the location of a multiplex theater in the RiverPark Specific Plan, an amendment to the development agreement. The second item was to authorize the Respondent to sign and execute a Memorandum of Understanding relating to the development of the RiverPark Project. Respondent voted “Aye” on both of these items, which passed.

Shea LLC was directly involved in the decision since it was the “subject of the proceeding” involving its own development. In fact, Shea LLC and Respondent signed both the ordinance amending the development agreement and the Memorandum of Understanding on behalf of RiverPark A, LLC. The decision had a reasonably foreseeable material financial effect on Shea LLC, (in this case the effect is presumed to be material), the project amendments were approved, and the project moved forward.

CONCLUSION

This matter consists of six counts, which carries a maximum possible administrative penalty of Thirty Thousand Dollars (\$30,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

SEI Non-Disclosure: Penalties for SEI non-disclosure violations range widely depending on the circumstances of each case. Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

Regarding the failure to disclose gifts received over the \$50 reporting threshold on SEIs, the typical penalty amounts have varied depending on the circumstances of the case. Recent prior penalties concerning SEI disclosure violations include:

- *In re Michael Rubio*, FPPC No. 07/293 (Approved January 28, 2011). Michael Rubio, as a member of the Kern County Board of Supervisors, failed to disclose his wife's income on his 2006 SEI. No evidence was found to show that his wife's income was intentionally omitted from his SEI. Further, he stated that he was married shortly before taking office and was unaware of the requirement to disclose his wife's income. However, this source of income was the source of a conflict of interest when he voted to approve a contract for his wife's employer. The approved stipulated settlement was \$1,000 for the violation of failing to disclose income on an SEI and \$2,500 for the violation of the conflict of interest provisions of the Act.
- *In re Gregory Fox*, FPPC No. 10/798 (Approved November 10, 2011). The Commission also approved a \$1,000 per violation regarding the non-disclosure of real property interests. In that case, Respondent Fox failed to disclose his interest in two undeveloped properties but insisted that he had received advice that led him to believe that the two parcels could be treated as part of his personal residence property and therefore not disclosed.

In this matter, Respondent Holden did not disclose gifts received from developers who regularly do business within his jurisdiction. Respondent states that he was not aware that the developer, Shea LLC, paid for the dinners and events that he attended, and for that reason, he did not disclose the gifts. Respondent has no prior history of violating the Act. Respondent amended his SEIs when contacted by the Enforcement Division. Based on the above prior cases and the information provided in this case, imposition of a \$1,000 penalty for each count is recommended.

Over-the-limits Gift: Penalties for gifts received over the applicable limits violations in the last couple of years range between \$1,500 for gifts of low amounts with little possibility of causing a conflict of interest to \$2,500 but depends on the circumstances of each case. Recent prior penalties concerning gifts received over the applicable limits violations include:

- *In re Louie Martinez*, FPPC No. 09/261 (Approved June 9, 2011). Louie Martinez, a senior project manager for the City of Irvine, received discounted landscaping service

with a company who contracted with the City. The approved stipulated settlement was \$2,000 per count for the violations of receiving gifts over the limit and \$4,000 for the violation of the conflict of interest provisions of the Act when he approved an invoice for payment of approximately \$86,000 to the company that provided him the services.

- *In re Patrick Moloney*, FPPC No. 09/826 (Approved June 10, 2010). Patrick Moloney, Executive Director of the Pilot Commission for the Bays of San Francisco, San Pablo and Suisun, received gifts in the form of free monthly waterfront parking from an association representing the pilots the board regulates. The approved stipulated settlement was \$2,000 per count for the violations of receiving gifts over the limit, for a total penalty of \$4,000.

In this matter, Respondent Holden received gifts over the limits from two developers who have regular business with the City of Oxnard. As stated above, he was unclear that Shea LLC provided some of the meals. In addition, Respondent states that he believed that because of his close, personal friendship with Mr. Huberman, the trip provided to Napa was not a gift under the Act. Respondent has paid down the gifts received to the amount of the applicable gift limit. Based on the above prior cases and the information provided in this case, imposition of a \$2,000 penalty for each count is recommended.

Conflict of Interest: Making a governmental decision in which an official has a financial interest may create the appearance that the governmental decision was a product of that conflict of interest. Penalties for conflict of interest violations in the last couple of years range between \$2,500 to \$4,500 but depending on the circumstances of each case. Recent prior penalties concerning conflict of interest violations include:

- *In the Matter of Theodore Park*, FPPC No. 11/058 (Approved July 12, 2012). Theodore Park was the Acting Deputy Director of the Real Estate Services Division of the California Department of General Services. His conflict of interest stemmed from his wife's income from a client of her business, which Mr. Park signed certifications to allow the contracts for that business to be executed. The approved stipulated settlement was \$3,500 for the violation of the conflict of interest rules.
- *In re Louie Martinez*, referred to above, \$4,000 was the fine for the violation of the conflict of interest provisions of the Act when he approved an invoice for payment of approximately \$86,000 to the company that provided him the services resulting from his gifts received over the limits.

In this case, although Respondent takes full responsibility for his actions, he asserts that since he was unclear as to the source of the gifts from Shea LLC, he also did not know that he could not approve items regarding Shea LLC's development project. Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$3,500 is justified. A higher penalty is not being sought because Respondent cooperated fully with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early

settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Additionally, there is no history of prior violations of the Act by Respondent.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Ten Thousand Five Hundred Dollars (\$10,500) is recommended.

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Chief of Enforcement
2 GALENA WEST
Senior Commission Counsel
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4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of)	FPPC No. 12/026
)	
13)	STIPULATION, DECISION and
14 DR. THOMAS HOLDEN,)	ORDER
)	
15)	
16 Respondent.)	
)	

17
18 Complainant the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Dr. Thomas Holden agree that this Stipulation will be submitted for consideration by the
20 Fair Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed. It is further
3 stipulated and agreed that Respondent Dr. Thomas Holden violated the Political Reform Act by failing
4 to report gifts received in the amount of fifty dollars or more on his annual Statement of Economic
5 Interests, in violation of Section 87203 of the Government Code (3 counts); accepting gifts, which
6 exceeded the gift limit, in violation of Section 89503, subdivision (a) of the Government Code (2
7 counts); and made, participated in the making, or influenced a governmental decision when he voted to
8 approve an ordinance to authorize the location of a theatre in a Specific Plan and voted to grant authority
9 to the himself to approve a Memorandum of Understanding with J.F. Shea Co., & Affiliated Companies,
10 who was the source of a gift that exceeded the annual gift limit applicable to Respondent, in violation of
11 Government Code Section 87100 (1 count). All counts are described in Exhibit 1, which is attached
12 hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate
13 summary of the facts in this matter.

14 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
15 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
16 of Ten Thousand Five Hundred Dollars (\$10,500). A cashier's check from Respondent in said amount,
17 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
18 payment of the administrative penalty, to be held by the State of California until the Commission issues
19 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
20 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
21 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
22 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
23 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
24 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
25 shall be disqualified because of prior consideration of this Stipulation.

26 //

27 //

1
2 Dated: _____

Gary Winuk, Enforcement Chief,
on behalf of the
Fair Political Practices Commission

3
4
5
6 Dated: _____

Dr. Thomas Holden,
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Dr. Thomas Holden,” FPPC No.
3 12/026, including all attached exhibits, is hereby accepted as the final decision and order of the Fair
4 Political Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

9 Ann Ravel, Chair
Fair Political Practices Commission